

PATENT
Atty. Dkt. No. ROC920010125US1
MPS Ref. No.: IBMK10125

REMARKS

This is intended as a full and complete response to the Final Office Action dated June 27, 2005, having a shortened statutory period for response set to expire on September 27, 2005. Applicants submit this response to place the application in condition for allowance or in better form for appeal. Please reconsider the claims pending in the application for reasons discussed below.

Claim Amendments

Claims 1-47 are pending in the application. Claims 3, 7-11, 24, 27, 33, and 44 remain pending following entry of this response.

While the claims 1-2, 4-6, 12-23, 25-26, 28-32, 34-43 and 45-47 are believed to be allowable, the claims have been cancelled without prejudice and Applicants reserve the right to pursue these claims in a continuing application.

With respect to the remaining claims, dependent claims have been amended. Claims 3, 7, 24, 27, 33, and 44 have been rewritten into independent form, including the limitations contained in any intervening dependent claims. Furthermore, claim 7 has been amended to clarify the claimed subject matter. Applicants submit that the amendments do not introduce new matter. Furthermore, Applicants submit that the amended dependent claims are clearly allowable with respect to the Examiner's basis for rejection.

Claim Rejections - 35 U.S.C. § 103

Claims 1-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Berezowski et al.* (US 2002/0056087 A1, hereinafter *Berezowski*). Applicants respectfully traverse this rejection.

The Examiner bears the initial burden of establishing a *prima facie* case of obviousness. See MPEP § 2142. To establish a *prima facie* case of obviousness three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Third, the prior art reference (or

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references when combined) must teach or suggest all the claim limitations. See MPEP § 2143. Applicants respectfully submit that the present rejection fails to establish at least the third criteria.

With respect to amended claim 3, the claim describes transmitting data representing a growth rate of viewers for a particular program. Examiner states that *Berezowski* discloses transmitting data representing a growth rate of viewers for a particular program at Para. 0073. The cited paragraph describes that "audience information may provide the user with ratings, the audience size for a particular program, the market share of a particular program, or any other suitable information related to the audience of a program or other media". The cited paragraph does not describe transmitting data representing a growth rate of viewers for a particular program. Accordingly, *Berezowski* does not teach all the claim limitations of the pending claim. Withdrawal of the rejection is respectfully requested.

With respect to amended claim 7, the claim describes transmitting group information identifying group members of the defined group. Examiner states that *Berezowski* discloses providing group information comprising group members of the defined group in Figure 16. The cited figure is in fact directed to displaying the number of viewers in the defined zip code watching or recording a program. Thus, as an initial matter, *Berezowski* does not teach "a defined group of the plurality of end-user receivers". The viewers in a zip code do not make up a defined group of end-user receivers. In fact, quite the opposite, defining viewership on the basis of a geographic location necessarily means the particular end-user receivers are undefined since end-user receivers may be removed from and/or added to the defined region and thus define a variable, not a constant. The difference may be illustrated with an example. Consider "a defined group of the plurality of end-user receivers" comprising end-user receivers A, B, and C. The end-user receivers may be in the same zip code or in different zip codes. Where the end-user receivers are located is irrelevant to the definition of the group, as claimed. Thus, the group is not defined by geographic region (zip code), but by the particular end-user receivers themselves. It follows that the particular viewers or end-user receivers themselves in the zip code are not identified in the figure; rather, only a

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number of viewers is shown. Accordingly, *Berezowski* does not teach all the claim limitations of the pending claim. Withdrawal of the rejection is respectfully requested.

With respect to dependent claims 8-11, each of the claims depends from claim 7. Accordingly, the rejection with respect to dependent claims 8-11 is believed to be overcome for the reasons stated above. Withdrawal of the rejection is respectfully requested.

With respect to amended claim 24, the claim describes viewership indicators which indicate a viewership growth rate in at least one program being transmitted in a video signal. Examiner states that *Berezowski* teaches that the processor is configured to format an on-screen guide interface with viewership indicators using the viewership data, wherein the viewership indicators indicate a viewership growth rate in at least one program being transmitted in the video signal in Figures 5-6, Items 550 and 605, and Para. 0072. The cited figures and paragraph are in fact directed to depicting users **currently watching** a television program ("Mad About You"). By definition, therefore, the portion of *Berezowski* cited by the Examiner does not disclose a viewership **growth rate**, or any other kind of rate. Accordingly, *Berezowski* does not teach all the claim limitations of the pending claim. Withdrawal of the rejection is respectfully requested.

With respect to amended claim 27, the claim describes on-screen guide formatting information which comprises a growth rate of viewers for a particular program. Examiner cites Para. 0073 as disclosing transmitting data representing a growth rate of viewers for a particular program. Applicants respectfully submit that the rejection is overcome for the reasons provided above with respect to claim 3. Withdrawal of the rejection is respectfully requested.

With respect to amended claim 33, the claim describes a processor further configured to determine whether a particular program is significant based on at least one of a size and a growth rate of a current viewing audience, and for each significant program, transmit an alert information to a plurality of end-user receivers. Examiner states that *Berezowski* teaches a processor further configured to determine whether a particular program is significant based on at least one of a size a current viewing audience, and for each significant program, provide alert information to the plurality of end-user receivers at Figures 5-6, and in paragraphs 0073-0074. Examiner states

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"when user clicks on icon 550, a pie chart 605 is displayed to show how many users currently watching "Mad about you"". As stated by the Examiner, the cited Figure and paragraphs are directed to a pie chart displayed in response to a user request. Accordingly, the cited Figure and paragraphs do not describe a processor further configured to determine whether a particular program is significant based on at least one of a size and a growth rate of a current viewing audience, and for each significant program, transmit an alert information to a plurality of end-user receivers. Withdrawal of the rejection is respectfully requested.

With respect to amended claim 44, the claim describes viewership information comprising group information indicating which members of a group are watching a program.

Examiner states that *Berezowski* shows viewership information comprising group information indicating which members of a group are watching a program at paragraphs 0089 and 0091. The cited section is in fact directed to providing a user with access to the user's profile. See *id.* The system may use a user's log-in information to retrieve the user's information. *Id.*

The cited section also states that the interactive application may compare the user to other users with similar demographics. *Id.* The cited section states "in some embodiments, the user may be enabled to select national data (e.g., all users across the nation), regional data (e.g., all users in a user's geographical region), or market data (e.g., all users in a specific market/metro area). When the user compares the user to other users with similar demographics, the user is provided with information indicating a percentage of users watching or recording a program. See Figures 12-17. However, the cited section and figures do not describe viewership information comprising group information indicating which members of a group are watching a program.

Accordingly, *Berezowski* does not teach all the claim limitations of the pending claim. Withdrawal of the rejection is respectfully requested.

Therefore, the claims are believed to be allowable, and allowance of the claims is respectfully requested.

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Conclusion

Having addressed all issues set out in the office action, Applicants respectfully submit that the claims are in condition for allowance and respectfully request that the claims be allowed.

If the Examiner believes any issues remain that prevent this application from going to issue, the Examiner is strongly encouraged to contact the undersigned attorney to discuss strategies for moving prosecution forward toward allowance.

Respectfully submitted,



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